

Agenda item:	5
Report title:	Guidance for medical practitioners' tribunals on restoration following disciplinary erasure
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Considered by:	FPD SMT and MPTS Policy Forum
Action:	To consider and approve

Executive summary

The Board is asked to consider and approve new guidance for medical practitioners' tribunals ('tribunals') on restoration following disciplinary erasure. The Court of Appeal in our section 40A appeal [case](#) involving Dr Chandra noted the need for more guidance on how the tribunal should exercise its discretion with reference to the GMC's overarching objective.

The new guidance at Annex A sets out the test for restoration following disciplinary erasure as confirmed by the Court of Appeal, the approach that tribunals should take and the factors that are relevant to their decision in these cases.

A second phase of work will follow to produce guidance for tribunals on applications for restoration following voluntary or administrative erasure where there are outstanding fitness to practise concerns. There is a separate statutory framework and different factors for tribunals to consider and assess in those cases.

The Board is also asked to note the parallel changes to the existing *Guidance for doctors on restoration following erasure by a medical practitioner's tribunal*.

Recommendation/s

- a** That the Board consider and approve the new *Guidance for medical practitioners' tribunals on restoration following disciplinary erasure* at annex A.
- b** That the Board consider and approve the proposed changes to the existing *Guidance for doctors on restoration following erasure by a medical practitioner's tribunal* at annex B.

Background

- 1 Tribunals consider around 12 restoration applications a year from doctors who were previously erased for disciplinary reasons (around 80% of all restoration applications). These applications are referred by the Registrar directly to the MPTS to arrange a hearing.
- 2 The need for new guidance was highlighted by the Court of Appeal in our section 40A appeal [case](#) involving Dr Chandra. It was noted that the guidance currently available sets out only the practical issues to be addressed evidentially by the doctor. The current guidance makes no reference to how the tribunal should exercise its discretion and makes no reference to the GMC's overarching objective. We accepted that the guidance needed extensive revision.

Key principles

- 3 Draft guidance is at annex A. The key principles are:
 - The test for restoration following disciplinary erasure is "having considered the circumstances which led to erasure and the extent of remediation and insight, is the doctor now fit to practise having regard to each of the three elements of the overarching objective?"*
 - The factors relevant to the tribunal's decision include the original reasons for erasure, what the doctor has done while unregistered and the extent of their insight and remediation. Having made findings in relation to these factors, tribunals should to take a step back and balance their findings against whether restoration will meet the GMC's overarching objective. Tribunals must consider all three elements of the overarching objective and provide reasons for why restoration does, or does not, meet them.
 - Examples are provided of serious criminal convictions where restoration is less likely to meet the overarching objective usually because public confidence in the profession would be undermined if the doctor is allowed to return to practice (paragraph B49).

The doctor's clinical knowledge and skills

- 4 The MPTS raised questions about how tribunals should weigh the potential deterioration in a doctor's knowledge and skills as they will not have practised for at least five years and often longer.

* GMC v Chandra [2018] EWCA Civ 1898

- 5** The primary responsibility for supporting doctors in returning to work lies with employers. There are formal returner programmes for GPs and other specialties with guidance issued by the Academy of Medical Royal Colleges. In terms of restrictions imposed by the GMC, all doctors returning to the register after a break of five years or more are currently required to undergo revalidation within 12 months, although they may be granted a deferral if this is insufficient time to meet the requirements. Doctors returning to the register after a period of at least five years are also required to work in an Approved Practice Setting (APS). An APS restriction only ensures the doctor has a connection to a designated body and therefore has a Responsible Officer (RO) with statutory legal responsibilities to report any concerns about their fitness to practise to the GMC. It still allows a doctor to undertake locum or private work.
- 6** Discussions with colleagues in Registration and Revalidation have confirmed it is the GMC's position that revalidation, coupled with employers' obligations underpinned by the statutory responsibilities of Responsible Officers, provides sufficient assurance that restored doctors are not placing patients at risk due to deterioration in their clinical skills. Once a tribunal has restored a doctor following disciplinary erasure they are treated in the same way as a doctor returning from a lengthy break in practice.
- 7** In light of this position, and the test for restoration confirmed by the Court of Appeal requiring the doctor to be fit to practise unrestricted, the guidance also contains the following principles:

 - Although tribunals have the power to direct the doctor to undergo a performance assessment, this will usually only be appropriate where there are specific concerns about a doctor's competence either dating from the point of erasure or arising from new evidence presented at the hearing.
 - In order to allow restoration, tribunals must be satisfied the doctor is fit to practise unrestricted. Part of making this judgment will include reviewing the adequacy of the steps the doctor has taken to maintain their clinical knowledge and skills. Tribunals are advised not to place undue weight on a potential restriction to work in an Approved Practice Setting (APS) as it is not intended as a regulatory mechanism to monitor doctors with a history of disciplinary erasure.

Risks and proportionate regulation

- 8** We have not identified any significant risks from the implementation of the new guidance. Rather it will mitigate the risk of tribunals making inconsistent restoration decisions which are not aligned to the overarching objective. It will support decision making that is proportionate, consistent and transparent leading to fair outcomes for doctors seeking restoration.

Engagement and consultation

- 9** We have worked closely with the MPTS in developing the guidance which has been approved by the MPTS Policy Forum. We have also sought the views of FPD senior management and GMC Legal and incorporated their feedback into the final draft. We liaised with Registration and Revalidation on the issue of the deterioration in a doctor's clinical knowledge and skills and sought their feedback on the post restoration section in the guidance. In terms of external engagement, we have sent the draft guidance to the BMA and Medical Defence Organisations who have raised no concerns although applicants for restoration are unregistered doctors.

Equality and diversity

- 10** The number of restoration hearings is too low to draw reliable conclusions about whether any particular groups who share a protected characteristic will be disproportionately affected by the introduction of the new guidance. It is likely however that male doctors, doctors over 50 and BME doctors will be most affected on the basis of data published in SOMEPEP about doctors who are erased by a tribunal.
- 11** We do not believe the principles in the guidance will have a specific adverse impact on groups that share a protected characteristic. In fact there should be a positive impact for all doctors as the new guidance will support consistent and fair decision making. By publishing the guidance, doctors applying for restoration will be able to see what factors the tribunals will consider and the approach and test they will apply when deciding whether to allow them to return to the register.

Guidance for doctors on restoration following disciplinary erasure

- 12** Some minor amendments have also been made to the existing *Guidance for doctors on restoration following erasure by a medical practitioner's tribunal* to ensure it is consistent with the new tribunal guidance. These are detailed in the tracked changes version at annex B and include updating the title.

Next steps

- 13** If the guidance is approved by the Board, we will arrange its implementation by the end of October. It will be published on the MPTS website and communications sent to the BMA and MDOs. The MPTS will arrange communications with tribunal members and any necessary training.
- 14** We have considered the four country perspective and not identified any practical implications arising from the new guidance that will require a different approach in the devolved countries.

Item 5 - Annex A

Guidance for medical practitioners tribunals on restoration following disciplinary erasure

Purpose

- 1** This guidance provides tribunals with advice on the approach to be taken in restoration hearings following disciplinary erasure. It sets out the test to be applied by tribunals and the key factors they should consider when deciding if a doctor should be restored to the register. Its aim is to support consistent decision making in line with our overarching objective. This is to protect the public which includes protecting, promoting and maintaining the health, safety and wellbeing of the public, maintaining and promoting confidence in the medical profession and proper professional standards and conduct among doctors.

Contents

- 2** [Part A](#) provides an overview of the legislative framework, the process followed at restoration hearings and the tribunal's powers in respect of restoration.
- 3** [Part B](#) sets out the approach tribunals should take in restoration hearings following disciplinary erasure. It flags the different factors that tribunals should consider and the importance of considering all three elements of the overarching objective when deciding if the doctor is fit to practise.
- 4** [Part C](#) sets out the approach tribunals should take in restoration hearings following disciplinary erasure where there are new allegations of impairment.
- 5** [Part D](#) sets out the tribunal's power to adjourn a restoration hearing to allow for an assessment or further enquiries to be carried out.
- 6** [Part E](#) describes the doctor's right to make further applications for restoration if an earlier application has been refused.

- 7** [Part F](#) sets out the relevant registration and revalidation requirements placed on doctors who return to practice following a lengthy period off the register and Part G summarises the key points in relation to tribunal decisions.
- 8** Unless otherwise stated, references to Rules are to the [GMC Fitness to Practise Rules 2004 \(as amended\)](#) and references to sections are to the provisions of the [Medical Act 1983 \(as amended\)](#).

Part A – Overview of the legislative framework, the process followed at restoration hearings and the tribunal’s powers in respect of restoration

- A1** If a doctor wishes to return to the register after being erased for disciplinary reasons, they must submit an application for restoration* to the Registrar of the GMC. A minimum of five years must have elapsed from the date that a doctor was erased before they are able to make an application for restoration. The Registrar will refer completed applications to the MPTS to arrange a medical practitioners tribunal (MPT) restoration hearing. The purpose of a restoration hearing is for the tribunal to decide if the doctor is fit to practise and whether it is consistent with our overarching objective to allow the doctor to regain their registration.
- A2** Restoration hearings are held in public unless the tribunal is considering matters relating to the doctor’s physical or mental health or the tribunal decides the particular circumstances of the case outweigh the public interest in holding some or all of the proceedings in public†.
- A3** There are three potential scenarios in which a doctor’s restoration application may lead to a tribunal hearing:
- The doctor was erased for disciplinary reasons and applies for restoration after a minimum of five years has elapsed
 - The doctor was granted voluntary erasure or was administratively erased and the GMC’s case examiners decide to refer their restoration application to the MPTS. This is likely to occur where there are unresolved concerns about the doctor’s fitness to practise, which were either known about at the point of erasure or have arisen during the period the doctor has not been registered.

* Under section 41

† The procedure to be adopted by a MPT is set out at Rule 24

- The doctor was erased* because they did not disclose relevant information about their fitness to practise at the point of registration, and applies for restoration after a minimum of five years has elapsed.

A4 This guidance only relates to the first scenario where the doctor was erased for disciplinary reasons.

Procedure at restoration hearings

A5 The GMC's representative will present their submissions first, setting out the background to the case and presenting any relevant evidence regarding the doctor's fitness to practise[†]. The GMC's representative will explain whether or not the GMC opposes the doctor's application for restoration.

A6 The doctor or their representative will then present their case in support of their application for restoration. They can submit written documentation and call relevant witnesses to give oral evidence.

A7 The MPT can grant or refuse a doctor's application for restoration. It can also adjourn the hearing, usually to enable a health, language or performance assessment to be carried out, although the MPT can also direct any other enquiries it feels are necessary. Further detailed guidance on adjournments is at part D. The MPT has no power to restore a doctor to the medical register with restrictions on their registration; therefore it is not possible to grant restoration with conditions or undertakings.

A8 Tribunals have a broad discretion when considering restoration applications and may direct a doctor's name be restored to the register 'if they think fit.'[‡]

A9 Where there are new allegations of impairment that have not previously been determined, the tribunal must weigh the evidence carefully before they make a decision on restoration, as set out in Part C below.

Part B - Restoration hearings following disciplinary erasure where there are no new allegations of impaired fitness to practise

B1 The onus is on the doctor applying for restoration to satisfy the MPT that they are fit to return to unrestricted practice[§]. The MPT should not seek to go behind the original tribunal's findings on facts, impairment and sanction.

* Under section 44(B)(1)

† The order of proceedings at a restoration hearing is set out in rule 24(2)

‡ Section 41(1)

§ Section 41(6)

B2 The test to be applied by tribunals when considering if a doctor should be restored is that 'having considered the circumstances which led to erasure and the extent of remediation and insight, is the doctor now fit to practise having regard to each of the three elements of the overarching objective* ?'.

Relevant factors to be considered by the tribunal

B3 The following factors may be relevant to the tribunal's decision. They should be carefully balanced in order to make an overall judgment on whether the doctor is fit to practise and that restoration achieves the overarching objective. The relevance of different types of evidence will vary however depending on the circumstances of the individual case.

The circumstances that led to disciplinary erasure

B4 Tribunals will be provided with copies of the previous tribunal or panel's determinations and, in some cases, transcripts of the original hearing. This will enable them to fully consider the background to the restoration application and identify the specific past concerns about the doctor's fitness to practise.

B5 The reasons given by the previous MPT to direct erasure will help the tribunal understand why erasure was the only means by which the public could be protected taking into account the need to maintain public confidence in the medical profession and/or maintain proper professional standards and conduct for doctors. The previous tribunal's determinations may also contain helpful information about the doctor's level of insight and remediation at the time of erasure.

Whether the doctor has demonstrated insight into the matters that led to erasure, taken responsibility for their actions, and actively addressed the findings about their behaviour or skills

B6 It will be important for the MPT to assess whether the doctor has demonstrated insight into the findings that led to their erasure. It is crucial that a doctor has genuine insight into what went wrong and appreciates what could have been done differently. They should also understand how they could act differently in the future to avoid similar concerns occurring again.

B7 Evidence of the doctor's current level of insight will be a significant factor for the MPT in assessing the risk the doctor may repeat their previous misconduct or poor performance.

B8 Oral evidence from the doctor will generally allow the MPT to better assess the doctor's level of insight than relying on written statements as the tribunal has

* GMC v Chandra [2018] EWCA Civ 1898

the opportunity to ask questions to address specific concerns about the doctor's fitness to practise.

- B9** Tribunals should however be aware that cultural differences and a doctor's circumstances, for example their ill health, could affect how they express insight or how they frame and communicate an apology or regret. They should be aware of, and sensitive to, these issues when assessing whether a doctor has insight.

Insight and remorse

B10 Factors that can be relevant to a doctor demonstrating genuine insight include, but are not limited to, evidence they have:

- a** considered the concern, understood what went wrong and accepted they should have acted differently
- b** demonstrated that they fully understand the impact or potential impact of their performance or conduct, for example by showing remorse (see below)
- c** demonstrated empathy for any individual involved, for example by apologising fully (see below)
- d** taken steps to remediate and to identify how they will act differently in the future to avoid similar issues arising (see below)

B11 The doctor is unlikely to be able to demonstrate genuine insight if they have failed to demonstrate some or all of the factors above, or have only demonstrated them in a limited way.

B12 Expressing remorse involves the doctor taking responsibility and exhibiting regret for their actions. This could include evidence that the doctor has:

- a** been open and honest about and admitted their wrongdoing
- b** apologised fully
- c** undertaken appropriate remediation.

Remediation and risk of repetition

B13 Remediation is where a doctor actively addresses concerns about their behaviour, skills, performance or health. Remediation can take a number of forms and, where successful, will weigh in favour of allowing restoration.

B14 For remediation to be judged successful it must be focused on activities that reduce the level of risk posed to patients, members of the public and to public confidence in the profession from allowing the doctor to return to practice.

Efforts to remediate should be driven by the doctor with support from others as appropriate.

B15 Remediation can take a number of forms, including, but not limited to:

- a** participating in training, supervision, coaching and/or mentoring relevant to the concerns raised
- b** attending courses relevant to the concerns raised, for example anger management, maintaining boundaries, ethics or English language courses
- c** evidence that shows what a doctor has learnt following the events that led to the concerns being raised, and how they have applied this learning in their practice (where applicable)
- d** evidence of good practice in a similar environment to where the concerns arose.

B16 When assessing remediation in restoration cases, the tribunal should consider the following questions:

- *Are the previous findings/any new concerns about the doctor's behaviour, skills, performance or health remediable?*
- *Have the findings about the doctor's behaviour, skills, performance or health been remedied?*
- *Are the previous findings about the doctor's behaviour, skills, or performance likely to be repeated?*

Are the previous findings/any new concerns about the doctor's behaviour, skills, performance or health remediable?

B17 Some concerns, such as clinical errors, are generally more capable of being remedied than others.

B18 It can be more difficult to demonstrate sufficient remediation in cases involving serious behaviour such as dishonesty, sexual misconduct, violence or abusive behaviour and unlawful discrimination, and cases where the doctor's behaviour towards patients, colleagues or other individuals in the workplace suggests underlying problems with their attitude or, in very serious cases involving clinical failings, indicates the doctor is reckless as to the safety of patients.

Have the findings about the doctor's behaviour, skills, performance or health been remedied?

B19 There isn't a set way to demonstrate remediation; the way in which the doctor can show they have actively addressed the concerns will depend on the specific facts of the case.

B20 The quality of the steps the doctor has taken to remediate the concerns is key to assessing the impact it has had, or is capable of having. The tribunal should consider whether any remediation undertaken by the doctor is:

- a** relevant - in that the steps taken to remediate have directly addressed the concerns identified
- b** measurable – in that there is objective evidence available that helps the tribunal understand what has been done and what, if anything, is left to be done, and
- c** effective - in that there is enough information for the tribunal to see how any learning has been assessed and/or applied by the doctor and its impact or success

B21 Remedial steps that have been completed will usually carry greater weight than actions started by a doctor and not yet concluded, or steps identified by a doctor as action they can take in the future.

Are the previous findings about the doctor's behaviour, skills, or performance likely to be repeated?

B22 When considering if it is likely that the concerns will be repeated, the tribunal will need to consider the extent of the doctor's insight and whether the steps that have been taken by the doctor to remediate are sufficient to achieve public protection.

B23 Tribunals can also consider the following factors in assessing whether the concerns are likely to be repeated:

- a** whether there was a pattern of similar concerns
- b** the environment in which a doctor has been working since their erasure
 - i. where a doctor has been working in a similar environment to where the concerns arose and has been exposed to situations when there was a risk of repeating the concerns, the absence of repetition will be relevant
 - ii. where a doctor has not been working in a similar environment to where the concerns arose the absence of repetition will be of little or no relevance

- c the circumstances giving rise to the concerns - if the concerns arose in unique circumstances which are themselves unlikely to be repeated, then, it may suggest that the risk of repetition in the future is reduced
- d what steps a doctor has put in place to avoid the circumstances arising again and/or to cope with those circumstances, should they arise again
- e whether the doctor has an otherwise positive professional record, including an absence of any other concerns from past or current employers or another regulatory body

B24 A low but nonetheless real risk of repetition may be particularly significant where repetition could have a very serious outcome. A low risk of repetition should therefore be carefully distinguished from identifying no risk of repetition.

B25 When assessing the weight to be attached to remediation, steps started soon after the relevant events will usually carry more weight than those started just before, or at, the time of the doctor's application for restoration.

What the doctor has done since their name was erased from the register

B26 The MPT should also consider any activities the doctor has undertaken since erasure and whether these are relevant to their current fitness to practise. Examples of things which may have a bearing on the tribunal's decision are:

- the doctor has obtained employment in a field related to medicine and used it to keep up to date with developments in their speciality
- the doctor has undertaken research or teaching in a relevant field
- the doctor has completed a professional or academic qualification such as a PhD, diploma or MSc in a relevant subject*
- the doctor has written and published articles related to their area of practice in relevant publications.

Overseas practice

B27 If the doctor has been practising overseas, tribunals should carefully consider whether they are in good standing, have provided a certificate to this effect, and if they are able to provide satisfactory references from current and previous employers.

The steps the doctor has taken to keep their medical knowledge and skills up to date

* Copies of certificates should be provided

- B28** The doctor will not have had clinical contact with patients in the UK for a minimum of five years. The onus is on the doctor to demonstrate they have kept their medical knowledge and skills up to date and are safe to resume unrestricted practice.
- B29** Tribunals should evaluate whether the steps the doctor has taken are adequate to allow a return to full practice. Doctors may demonstrate they have maintained their clinical knowledge and skills through:
- undertaking clinical placements and/or observing clinical consultations
 - attending relevant courses in person
 - overseas practice.
- B30** Less weight should usually be given to online courses as these do not generally provide a proper opportunity for a doctor to witness doctor/patient interaction first hand and this can limit their value. However, tribunals will need to consider if there are good reasons why online learning was the best available way for the doctor to keep their knowledge and skills up to date. For example if health issues or caring responsibilities meant they found it difficult to attend relevant learning in person.
- B31** Although the MPT has the power to direct the doctor to undergo a performance assessment, this will usually only be appropriate where there are specific concerns about a doctor's competence either dating from the point of erasure or arising from new evidence presented at the hearing. A performance assessment should not be directed on the basis of a general concern the doctor's skills and knowledge may have deteriorated due to their time off the register.
- B32** Further information about the doctor's registration and revalidation status should they be restored is in part F. This should not be relied on however as assurance of the level of supervision the doctor will have on their return to practice.

The lapse of time since erasure

- B33** The length of time that has elapsed since the doctor was erased will be relevant although will not necessarily equate to them no longer posing a risk to patients or to public confidence in the profession.
- B34** The longer the doctor has been away from clinical practice, the greater the likelihood that their knowledge and skills will have deteriorated to a degree that may place patients at risk. Tribunals should pay close regard to how the doctor has maintained their knowledge during a lengthy period away from the register.

Will restoration meet the overarching objective?

B35 Having considered the different factors above, the tribunal must make findings in relation to whether the doctor is fit to practise. The tribunal should then step back and balance its findings against whether restoration will meet our overarching objective. This balancing exercise will involve careful consideration of each of the elements.



B36 The overarching objective reflects the purpose of the professional regulation of doctors which is to protect the public. Tribunals must act in a way that:

- a** protects, promotes and maintains the health, safety and well-being of the public
- b** promotes and maintains public confidence in the profession, and
- c** promotes and maintains proper professional standards and conduct for members of the profession.

Protecting, promoting and maintaining the health, safety and well-being of the public

B37 In restoration hearings, it will be important for the MPT to consider any future risk posed by a doctor to patients and members of the public. If the doctor was erased for disciplinary reasons, their conduct or performance was previously judged to be so serious that erasure was the only means by which the public could be protected or that public confidence in the medical profession and proper professional standards and conduct for doctors could be maintained.

B38 The doctor's response to their erasure and the levels of insight, remorse and remediation they have demonstrated will be important to the tribunal's assessment of future risk.

B39 Restoration should not be granted if the tribunal considers there to be a risk the behaviour or performance will be repeated which may result in physical or emotional harm being caused to a patient.

B40 Where the concerns related to the doctor's performance, or in a multi-factorial case, their knowledge of English and/or their health, the tribunal must be satisfied they have fully remediated and there is no longer a risk to patients. If the tribunal is not satisfied the doctor is fit to practise unrestricted, restoration will not be in line with the overarching objective to protect the public.

Promote and maintain public confidence in the profession

B41 Patients and members of the public must be able to trust doctors with their health, safety and wellbeing. Doctors are expected to act with honesty and integrity to ensure their behaviour justifies that trust.

B42 Where a doctor's past behaviour is so serious that it remains capable of undermining the trust that the public places in doctors, it is unlikely that restoration will be in line with the overarching objective. This applies to behaviour both inside and outside of a doctor's professional practice. There will be some cases where, even if insight and remediation have been fully demonstrated and there has been a significant lapse of time since erasure, public confidence in the profession would be undermined by allowing the doctor to practise again.

B43 Tribunals should ask themselves whether an ordinary, well informed member of the public who is aware of all the relevant facts would be concerned to learn the doctor had been allowed to return to practice. They should also have regard to the fact that maintaining public confidence in the profession as a whole is more important than the interests of an individual doctor.

B44 Although public confidence will be a stronger factor in cases involving behavioural misconduct, in certain cases, a clinical failing or error by a doctor will be so serious that, even if it is unlikely to recur, it is capable of undermining the public's trust in the profession. Restoration is unlikely to meet the overarching objective in these circumstances.

Promote and maintain professional standards and conduct

B45 We promote the professional values, knowledge, skills and behaviours expected of all doctors working in the UK by setting standards.

B46 To ensure that doctors work to a consistent set of standards, and patients understand what to expect from the care they receive, action is taken by tribunals where serious or persistent failures to follow the standards set pose a risk to patients or to public confidence in doctors. Erasing a doctor sends a clear message to the profession about what constitutes unacceptable behaviour and practice and corresponds with our duty to promote and maintain professional standards and conduct.

B47 Where there has been a very serious and/or persistent departure from the published standards resulting in erasure, it may not be consistent with the third element of the overarching objective to allow the doctor to practise again.

Types of case where restoration is generally unlikely to meet the overarching objective

B48 There will be cases where restoration is generally unlikely to be in line with the overarching objective. This would be irrespective of the length of time that has elapsed and whether there is strong evidence the doctor has demonstrated insight and maintained their clinical knowledge and skills.

B49 Restoration is unlikely to meet the overarching objective if the doctor was erased for conduct that was of an exceptionally serious nature such as being convicted of the following types of criminal offence:

- murder
- rape or sexual assault by penetration
- sexual offences involving children or adults with a mental disorder impeding choice. This could include the creation, possession or distribution of child sex abuse materials.
- offences involving human trafficking, slavery, servitude and forced or compulsory labour
- extortion and blackmail.

B50 This is not an exhaustive list and there may be other cases where restoration would be likely to undermine public confidence in the profession irrespective of other factors such as remediation.

B51 Tribunals should also exercise particular caution and consider carefully whether the doctor is fit to practise unrestricted in the following circumstances:

- the doctor has a criminal conviction resulting in a suspended sentence which remains in force
- the doctor is on the Sex Offenders register.

B52 It will usually be inappropriate for a doctor to hold unrestricted registration in these circumstances and restoration cannot be granted subject to conditions.

Part C – Restoration hearings following disciplinary erasure where there are new allegations of impaired fitness to practise

- C1** In a small number of restoration hearings, tribunals may need to consider new information about the doctor’s fitness to practise that has arisen since their erasure. For example, this may include criminal cautions/convictions or determinations by another regulatory body if the doctor has been working in another country or the doctor may have been working in a field related to medicine that does not require registration.
- C2** The approach which should be taken by tribunals is to consider all the factors detailed in part B in relation to the original matters which led to erasure. In addition, where there are previously untested allegations which call into question the doctor’s fitness to practise, tribunals must weigh the evidence carefully to reach a judgment:
- a** firstly on whether the new allegations are proved on the balance of probabilities
 - b** secondly on whether the doctor’s fitness to practise is impaired by reason of those new allegations.

The tribunal should invite the parties to make submissions and present evidence on both questions.

- C3** A doctor’s fitness to practise may be regarded as ‘impaired’ if the concern falls within one of six categories*:
- misconduct
 - deficient professional performance
 - a conviction or caution in the British Islands for a criminal offence (or if it’s a conviction elsewhere then there is an equivalent criminal offence in England and Wales)
 - adverse physical or mental health
 - not having the necessary knowledge of English
 - a determination by another health regulatory body (in the United Kingdom or elsewhere) that a person’s fitness to practise is impaired

* Section 35C of the Medical Act

- C4** There is no complete statutory definition of impaired fitness to practise and when considering whether a doctor's fitness to practise is impaired there is no required standard of proof. The decision is a matter for the tribunal's judgment alone.
- C5** As part of their submissions, the GMC will present any evidence about new allegations that have not previously been determined by a tribunal. The doctor will have been given notice of any new allegations in advance of the hearing and provided with copies of any information or evidence that underpins them. It is for the GMC to prove new allegations on the balance of probabilities.
- C6** Where the new concerns relate to the doctor's performance, health or knowledge of English, the onus will be on the doctor to undergo the relevant assessment if directed to do so by the GMC. Any assessments will usually have taken place prior to the restoration hearing. The assessment outcome will provide the tribunal with objective evidence of whether the doctor's fitness to practise is impaired.
- C7** Tribunals can rely* on certificates of conviction, determinations by overseas regulators and determinations by health and social care regulatory bodies as conclusive proof and the matters underpinning them do not need to be proved again at a restoration hearing.
- C8** Having considered all the factors relevant to the original erasure and any new information, the tribunal should then take a step back and consider if the doctor is fit to practise and whether restoration is in line with the overarching objective, taking into account each of the three elements. These are set out in part B.

Determinations by overseas regulatory bodies

- C9** Tribunals should be cautious about allowing restoration where the doctor is the subject of a determination by a regulatory body overseas and has current restrictions on their ability to practise in another country. This may be a strong indication they are not fit to practise without restriction in the UK.

Part D - Adjourning for a performance, language or health assessment

- D1** The tribunal has the power to adjourn the hearing and direct that the doctor undergo an assessment of their health, performance or language[†]. A performance or language assessment will be at the doctor's own cost.

* Under Rule 34(3) and 34(4)

† Under Rule 24(g)

- D2** Assessments may be appropriate in order to obtain objective evidence of whether any previously identified deficiencies in the doctor's performance or language skills have been remedied. Any assessments considered necessary by the GMC will usually have been carried out prior to the restoration hearing.
- D3** Tribunals can also adjourn the restoration hearing to enable any other information that is relevant to whether the doctor is fit to practise unrestricted to be obtained. They should however refer to the relevant guidance* before doing so.
- D4** Generally an adjournment is only likely to be appropriate where the tribunal is satisfied that the adjournment is necessary in order for the tribunal to fairly carry out its function and that the information cannot reasonably be obtained by other means. When the hearing resumes, both parties should have an opportunity to make submissions on any assessment report or other new evidence before a decision is made on restoration.

Part E – The doctor's right to make further applications for restoration

- E1** If restoration is refused, the doctor must automatically wait at least 12 months[†] before applying again. The tribunal has no discretion to make this period longer or shorter unless the doctor has made two or more previous applications.
- E2** If it is the doctor's second unsuccessful application, tribunals should consider whether to indefinitely suspend the doctor's right to apply for restoration[‡].
- E3** The doctor has the right to make representations on the question of whether the tribunal should use their power to indefinitely suspend further restoration applications.

Review of a decision to suspend indefinitely the doctor's right to re-apply

- E4** The doctor may apply[§] to the Registrar for the decision to indefinitely suspend their right to re-apply for restoration to be reviewed by a tribunal after three years from the date of the decision.
- E5** The tribunal may grant the application to allow the doctor to make a further application for restoration or refuse it. If the doctor's application is not successful, they cannot make a further application for review within three years of the date of the tribunal's decision. The tribunal has no discretion to make

* [Guidance for Medical Practitioners Tribunals on adjourning to direct an assessment or for further information or reports to be obtained](#)

[†] Section 41(2)(b)

[‡] Under section 41(9)

[§] The application will be governed by rule 24 of the General Medical Council (Fitness to Practise) Rules 2004 and sections 41(9) and 41(11) of the Medical Act

this period shorter or longer. If the doctor is unsuccessful, there is no statutory right of appeal, although the doctor has a right to challenge the decision by way of judicial review.

Part F – Post restoration matters

- F1** Doctors can apply for restoration either with or without a licence to practise. Once the tribunal has granted restoration, even if it is for registration only, the doctor will subsequently have the right to apply for a licence to practise.
- F2** If the doctor held provisional registration prior to being erased, they will be restored with provisional registration only.

Approved practice settings and revalidation

- F3** Where doctors are restored after five years or more away from practice they will only be permitted to work in an Approved Practice Setting (APS) until their first revalidation. If a doctor has the APS restriction on their registration, they can only practise in the UK if they have a connection to a designated body*. A designated body is an organisation that has established clinical governance processes including appraisal systems that support doctors with their revalidation and promote and protect the interests of patients. Connection to a designated body means the doctor:
- is supported with appraisal and revalidation
 - is supported with training and continuing professional development (CPD)
 - is monitored and supported in delivering quality care
 - either has a Responsible Officer or a Suitable Person with both being responsible for making revalidation recommendations to the GMC. While only Responsible Officers have a statutory responsibility to report any fitness to practise concerns to the GMC, a Suitable Person will monitor any concerns which might arise about the doctor's practice. The Suitable Person will also keep records of evaluations of the doctor's fitness to practise, including annual appraisals and any other investigations or assessments.

* Unless the doctor is based in Jersey, Guernsey, Isle of Man or Gibraltar and maintains a connection to a Suitable Person there. In these jurisdictions, the Suitable Person has a statutory responsibility to report fitness to practise concerns to the GMC.

- F4** Doctors with the APS restriction can work in any organisation and undertake locum or private work if they maintain a connection to a designated body and adhere to any reporting requirements set by their Responsible Officer, Suitable Person and/or training body. They must cease work in the UK if they no longer have a connection to a designated body and cannot practise again until a connection to a new one has been established.
- F5** It is important that tribunals do not place undue weight on the APS restriction when deciding whether to restore a doctor. It is not intended as a regulatory mechanism to monitor doctors with a history of disciplinary erasure. It should not therefore be viewed as a method of assurance for the GMC that a doctor, once restored, will be subject to any additional monitoring or performance reviews in comparison with a doctor who has no fitness to practise history.
- F6** When a doctor has been restored, it is the responsibility of their employer(s) and Responsible Officer or Suitable Person to support their return to practice. And for Responsible Officers to report any concerns about the doctor's fitness to practise to the GMC where there is a risk to patients or public confidence in the profession.
- F7** If a doctor is returning to General Practice, they will also be supported through formal induction and refresher/returner schemes available in each of the four devolved countries of the United Kingdom.
- F8** The Academy of Medical Royal Colleges has also published [guidance](#) on return to practice and the actions that should be taken by different parties including Responsible Officers or Suitable Persons and employers if a doctor has not worked for a significant period of time.

Revalidation

- F9** Doctors who were erased after 3 December 2012 and have missed a revalidation date due to being unregistered are usually required to undergo revalidation within 12 months of their restoration. However this date may be moved to allow the doctor sufficient time to gather their evidence to meet the requirements. Doctors who were erased prior to 3 December 2012 will undergo revalidation within five years.

Tribunal decisions

- G1** It is important that tribunals give clear reasons for their decision to either refuse or grant restoration which address all the factors relevant to the doctor's fitness to practise.
- G2** Decisions must clearly demonstrate that all three elements of the overarching objective were considered and that, if restoration was granted, this was judged

to be consistent with our duty to protect the public. This includes to protect and maintain the health, safety and wellbeing of the public, to maintain and promote public confidence in the profession and proper professional standards and conduct.

5 – Annex B

Guidance for doctors on restoration following disciplinary erasure

Purpose

- 1** The purpose of this guidance is to provide information for doctors on the process they should follow when seeking restoration to the register following disciplinary erasure. It also sets out the factors the tribunal will consider when deciding whether to allow a doctor to return to practice after they have been erased for disciplinary reasons.

Can I apply to be restored to the register?

- 2** Any doctor referred to the Medical Practitioners Tribunal Service (MPTS) for a hearing and erased from the register by a medical practitioners tribunal ('tribunal') can apply to be restored.
- 3** You cannot apply to have your name restored to the register until after a period of five years has elapsed since the date your name was erased from the register. If your application for restoration is successful your name will be restored to the medical register with a licence to practise, unless you tell us you do not want one.

How do I apply?

- 4** You will need to apply in writing using the restoration application form which can be obtained by [contacting us](#). You should also submit any documentary material you wish to have considered, such as testimonials and information that demonstrate the steps you have taken since your name was erased to keep your medical skills and knowledge up to date.

Should I seek advice before applying?

- 5 You may find it helpful to seek the advice of a medical defence organisation, a professional organisation, and/or a lawyer.

Who will consider my application?

- 6 Your application will be referred to a tribunal to consider at a hearing.

What happens next?

- 7 You will be given notice of the tribunal hearing at which your application will be considered. Not less than 28 days before the date of the hearing, the GMC will send you a notice of that hearing. Please see Annex A for details of a notice of hearing.

Should I attend the hearing?

- 8 This is a matter for you, although it may assist the tribunal in reaching a decision on your application if you are present. If you wish, a legal representative or an officer or member of your professional association can represent you.
- 9 Alternatively you may want a friend, family member or other person to represent you. The tribunal will need to decide if they are a fit and proper person to do so. To make this decision they will consider any available information including any criminal convictions or past conduct (see our guidance on [fit and proper persons](#)).

Can the GMC arrange legal representation for me at the hearing?

- 10 No. You will need to make your own arrangements for representation. If you cannot afford to pay for legal representation you may wish to contact Advocate. Advocate is a charity that helps to find free legal assistance from volunteer barristers. Call 020 7092 3960 or visit their website: <https://weareadvocate.org.uk>.

What will happen at the hearing?

- 11 Please see Annex B which provides information about what happens at each stage of the hearing. It also contains information about what the tribunal can and cannot do as far as your application is concerned.

What factors do the medical practitioners tribunal take into account when considering the application for restoration?

- 12** The tribunal will consider a number of factors, including the following:
- a** the circumstances that led to erasure including the reasons given by the previous tribunal (or panel) for the decision to direct erasure
 - b** whether you have demonstrated insight into the matters that led to erasure and taken responsibility for your actions
 - c** whether you have remediated the previous findings about your behaviour, skills, performance or health and if there is a risk of repetition
 - d** what you have done since your name was erased from the register
 - e** the steps you have taken to keep your medical knowledge and skills up to date.
- 13** The guidance used by tribunals when considering whether to restore a doctor is published [here](#). Having considered the above factors, the tribunal will balance their findings against whether restoration is in line with the GMC's overarching objective. This is to protect the public which includes protecting, promoting and maintaining the health, safety and wellbeing of the public, maintaining and promoting confidence in the medical profession and proper professional standards and conduct among doctors.
- 14** Before reaching a decision on your application the tribunal may adjourn and give such directions as it sees fit, including that you should undergo an assessment of your performance, language and/or health (see Annex B).
- 15** The tribunal will take into account the outcome of any assessments you undergo and all relevant evidence regarding your fitness to practise.
- 16** It is important to bear in mind that there is no right to be restored to the register. You will need to demonstrate why you should be restored and that you are fit to practise.
- 17** The tribunal has no power to restore you to the register with conditions or to restrict or limit your registration in any way. The tribunal will therefore consider whether you are fit to resume unrestricted medical practice; if there is any doubt about this matter you will not be restored to the register.

Assessment – what does it cost and who pays?

- 18** If the tribunal adjourns for a performance assessment, this will be undertaken by assessors chosen by the GMC. You will be required to meet the cost of the performance assessment which must be paid in full before it is arranged and can take place.
- 19** Once you have made the performance assessment payment, the GMC will write to you about the arrangements for the assessment to take place. After you have completed the assessment the assessors will produce a report and submit it to the GMC. A copy will also be sent to you.
- 20** An assessment of your health or language will only normally be required if the GMC has information that raises a question about your health or knowledge of English. You will not be charged for the cost of a health assessment but will need to meet the cost of a language assessment.

If my application succeeds how quickly will I be restored to the register?

- 21** If the tribunal decides to grant your application your name will be restored to the register as soon as possible, following the completion of certain administrative tasks such as an identity check and receipt of payment of the Annual Retention Fee. A member of our Registration and Revalidation directorate would contact you about this shortly after the hearing and further general [information](#) about restoration can be found on our website.
- 22** If you are restored by the tribunal to registration only without a licence (as this is what you requested) but then subsequently decide to apply for your licence to be restored, you will need to make an application through our Registration and Revalidation directorate. Information about how to do so is [here](#).

If my application succeeds will I have to practise in an approved practice setting?

- 23** Doctors returning to full registration after a prolonged period out of UK practice must practise only in an approved practice setting. This means they must only practise in the UK if they have a connection to a designated body. A designated body is an organisation that has established clinical governance processes including appraisal systems that support doctors with their revalidation and promote and protect the interests of patients. If your application for restoration is successful it is likely that you will be required to practise in an approved practice setting until your first

revalidation after restoration. For further information please see our guidance on [approved practice settings](#).

If my application was unsuccessful can I apply again?

- 24** Yes, unless your right to apply again has been suspended (see below). However you cannot make a further application for restoration until 12 months have elapsed from the date of your last application.
- 25** If you make two unsuccessful applications, your right to make further applications may be suspended indefinitely by the tribunal that considers your application for restoration. If this happens, you can apply for the suspension to be reviewed after three years have elapsed from the date on which the tribunal made the decision to suspend indefinitely your right to make further applications. If a tribunal does not lift the suspension on your right to apply, you can apply again but only after three years from the date of the last tribunal's decision.

If my application is refused will I be reimbursed the money I paid for the performance assessment I underwent?

- 26** No. That money was to meet the cost of the performance assessment. The assessment took place and you are not therefore entitled to any refund of that cost.

If I apply for restoration but the application is refused will I have to undertake further assessment(s) if I apply again for my name to be restored to the register?

- 27** Yes. If your application is refused and you then make a subsequent application, you may need to undertake further assessment(s) if we feel this is necessary due to concerns about your performance, health or knowledge of English.

This was last updated in XX 2019.

Note: Prior to 31 December 2015 medical practitioners tribunals were called fitness to practise panels

Annex A

What information does a notice of hearing provide?

- 1** A notice of hearing will be sent to you at least 28 days before your restoration hearing and will:
 - a** specify the date, time and venue of the hearing
 - b** inform you of your right to attend and be represented
 - c** inform you of the power of the tribunal to proceed in your absence
 - d** inform you of your right to adduce evidence and to call and cross examine witnesses
 - e** request you to notify the registrar, within 14 days of the date of the notice, whether you wish to attend the hearing
 - f** invite you, if you choose not to attend, to make written representations to be received by the registrar no later than 14 days before the hearing
 - g** where you have made a previous unsuccessful application, inform you of the tribunal's power to suspend indefinitely your right to make further applications for restoration
 - h** where you have made a previous unsuccessful application and have chosen not to attend the hearing, invite you to make written representations on the issue of indefinite suspension of your right to make further applications for restoration, such written submissions to be received by the registrar no later than 14 days before the hearing
- 2** Along with the notice, you will also receive a copy of any statement, report or other document which has not previously been sent to you or your representative which is relevant.
- 3** If any statement, report or document is subsequently obtained by the GMC which is relevant to the tribunal's decision, you will be given a reasonable opportunity to respond before the tribunal makes its decision.

Annex B

The procedure for considering applications for restoration to the register

- 1** The tribunal will first hear any preliminary legal argument.
- 2** If you are present, the chair of the tribunal will invite you to confirm your name and GMC reference number. If you are not present, the chair will require the presenting officer (the representative of the GMC – who may be a barrister or solicitor) to present the case on behalf of the GMC to confirm your name and GMC reference number.
- 3** The presenting officer will give the tribunal the background to the case and the circumstances which led to the erasure of your name from the register. They may direct the attention of the tribunal to any relevant evidence, including transcripts of previous hearings and may adduce evidence and call witnesses in relation to your fitness to practise.
- 4** You, or your representative, will have an opportunity to address the tribunal and present evidence and call witnesses on any relevant matter, including your suitability for restoration to the register.
- 5** You cannot ask the tribunal to reconsider the facts proved against you that led to your erasure. You had a right of appeal immediately after the original hearing. If you did not appeal, or appealed unsuccessfully, that was the end of the matter.
- 6** The tribunal may receive further evidence and hear further submissions from the parties as to its decision whether to grant or refuse the application.
- 7** Before reaching a decision on the application, the tribunal may adjourn and give such directions as it sees fit, including that you should undergo an assessment of your performance, language and/or health.
- 8** If the tribunal adjourns before reaching a decision, it shall:
 - a** consider any assessment reports together with any other relevant evidence and reports; and
 - b** invite further representations and evidence from the parties.
- 9** The tribunal will consider the matter and will give their decision to grant or refuse the application and their reasons.

- 10** If the tribunal determines that you should not be restored to the register and this is your second or subsequent application the tribunal may consider whether to make a direction to suspend indefinitely your right to make further applications for restoration. Before deciding whether to make such a direction the tribunal will consider any representations and evidence received and, where you are present, will invite further representations and evidence from you.
- 11** Having heard such evidence and representations, the tribunal will consider the matter and announce the decision and their reasons.
- 12** The GMC can appeal decisions made by tribunals*, including those to restore doctors to the register. The GMC has the power to make an appeal where it considers that the decision to restore a doctor is not sufficient for the protection of the public, taking into account:
- protecting the health, safety and well-being of the public;
 - maintaining public confidence in the medical profession; and/or
 - maintaining proper professional standards and conduct for members of that profession

If the GMC decides to lodge an appeal against the decision to restore you to the register, the MPTS will inform you at the end of the appeal period and the GMC will serve you with a notice of appeal. Once you have been restored to the register you will retain the right to practise until the appeal is determined.

- 13** The GMC is required to notify the Professional Standards Authority of certain decisions by a tribunal, including those to restore a doctor to the register†. The Professional Standards Authority may refer the case to the High Court of Justice in England and Wales if they consider a decision to restore a doctor's name should not have been made‡. The Professional Standards Authority will inform the doctor concerned if they are considering this course of action. Further information about the Professional Standards Authority is available on their website <http://www.professionalstandards.org.uk/>.

* Under Section 40A of the Medical Act 1983, as amended

† Under Section 41 of the *Medical Act 1983, as amended*

‡ Under Section 29 of the *NHS and Healthcare Professions Act 2002*.